

COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

April 26, 2013

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Michael N. Herring
Commonwealth's Attorney for the City of Richmond
400 North 9th Street, Suite 100
Richmond, Virginia 23219

Dear Mr. Herring:

Virginia law requires the annual disclosure of certain personal and financial interests by state officers and employees, including the Attorney General. The requirements for such filings are contained in Article 5 of Title 2.2 of the Code of Virginia of 1950, as amended. The Attorney General is the sole official charged with the initial enforcement function with regard to disclosures required by certain state officers and employees. Specifically, the Attorney General's responsibilities under §2.2-3126(A)(2) include as follows:

If he determines that there is a reasonable basis to conclude that any officer or employee serving at the state level of government has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of such officer or employee.

There is, however, an anomaly in the Code insofar as there is no official with authority or jurisdiction to monitor compliance by the Attorney General. As the Code reads, the Attorney General is responsible for making determinations as regards his own disclosures. From a public policy standpoint, it is problematic to have the Attorney General involved in the oversight of his or her own annual disclosure filings. However, that is how the law currently reads.

In looking back over my filings as Attorney General, I have discovered some shortcomings in my own disclosures. None of my initial filings were knowingly wrong; rather, I did not give adequate attention to some of the details in the statements I filed on those occasions. Each time I made the required disclosure to the Secretary of the Commonwealth as required, it was my belief that the information included therein was complete. However, I have previously filed amended disclosures when I realized the information I initially provided was incomplete. To that end, I will also be filing an amended statement this week which will include information I overlooked at the time of my previous filings.

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I did not knowingly fail to disclose anything the law requires to be reported. Therefore, I do not believe there is a reasonable basis to conclude I knowingly violated the law. However, to the extent some may argue that §2.2-3126(A)(2) can be read to apply to situations where mere appearance could lead one to suspect that a violation may have occurred, prudence dictates that I designate an independent Commonwealth's Attorney to consider the circumstances. While I give my word that I did not violate the statute, the people of Virginia should not have to take my word for it. Accordingly, I hereby appoint the Office of the Commonwealth's Attorney for the City of Richmond to perform this duty.

For your review, I include with this letter all of my financial disclosures filed as Attorney General, including amendments. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli II", with a stylized flourish at the end.

Kenneth T. Cuccinelli, II
Attorney General of Virginia